IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10606 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UPADHYAY SHANTABEN VITHALBHAI - Petitioner(s)
Versus
DISTRICT PRIMARY EDUCATION OFFICER & 2 - Respondent(s)

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Appearance :
MR AMIT P PATEL for Petitioner(s) : 1,
MR MANISH J PATEL for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2,
MR PARIMAL P PATEL for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 16/03/2006

ORAL JUDGMENT

1. The petitioner who discharged the duties as teacher in Bal Mandir run by respondent No.3-Gram Panchayat, has filed this petition seeking releasing of her salary from October 1999.

2. Respondent No.3-Gram Panchayat was running Bal Mandir. For the post of teacher grant was being received by the Gram-Panchayat from District Panchayat. Earlier one Smt. Kanchanben Shankarlal Pandya was appointed to the said post. Her services came to be terminated by the Gram-Panchayat. The petitioner came to be appointed to the said post in the year 1995. She received salary up to October, 1999. Thereafter, she has stopped receiving salary. She has therefore, filed the present petition.

2.1 It is the case of the petitioner that she has discharged her duties but she is not receiving salary. She has therefore, preferred the present petition making following prayer:

> “12.(B)Your Lordship may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction to direct the respondent Nos.1 and 2 to release the grant of the respondent No.3 Panchayat for Bal Mandir forthwith from 1995 and further direct the respondent No.3 to pay the salary to the petitioner from October 1999 at very earliest;”

3. On the other hand District-Panchayat has filed affidavit-in-reply dated 13.06.2005, contending that the Gram-Panchayat without prior permission terminated the

services of Smt. Pandya. She therefore, challenged the same termination before this Court by filing Special Application No. 8718 of 1998. Against the order of rejection of the petition, she has preferred Letters Patent Appeal No. 800 of 2000 which is pending. It is further stated that the appointment of the petitioner is not as per rules and no sanction or prior approval of the competent authorities was taken before appointing her. It is further stated that without following proper procedure Smt. Pandya was terminated and the petitioner was appointed without proper selection process and approval. The District Panchayat has therefore, stopped the grant for running Bal Mandir.

4. Respondent No.3 – Gram Panchayat has filed affidavit-in-reply dated 03.10.2005. It is inter-alia contended that the Panchayat has given undertaking on 02.06.2003 to abide by the decision that may be rendered in Letters Patent Appeal filed by the earlier teacher Smt. Pandya and that to release the grant at this stage subject to recovery if ultimately found necessary. It is stated that for want of grant, the Gram Panchayat would be forced to close down the Bal Mandir. Mr. Parimal Patel, learned Advocate appearing for the Gram-Panchayat

orally stated before this Court that the Gram Panchayat eventually did not close down Bal Mandir.

5. I get a distinct impression that there is collusion between the petitioner and Gram Panchayat. If the Gram Panchayat cannot afford to run Bal Mandir without the aid of the District Panchayat, it ought to have been closed down Bal Mandir without incurring any further liability. In any case, the Gram Panchayat cannot run Bal Mandir without paying salary nor Gram Panchayat hope to receive grant from the District Panchayat, no matter what the nature of appointment it makes.

6. Having said that, the fact remains that the petitioner discharged her duties after October 1999 at least till September 2002, when the respondent No.3 Gram Panchayat communicated to the District Panchayat that the grant should be released to enable the Gram Panchayat to make the salary. The petitioner should receive an order of payment of salary from October 1999 till September 2002. No further order for payment of salary is called for. Respondent No.3 has not produced any material to suggest that the petitioner did discharge her duties after September 2002. The nature of appointment of the

petitioner is clearly irregular. No selection process or any formality was undertaken before appointing her to the said post. She therefore, cannot get any benefit in addition to salary from October 1999 to September 2002. Respondent Nos.1 and 2 shall therefore, make payment of salary to the petitioner for the above period and recover the same from the grant to be paid to the Gram Panchayat.

7. The salary as directed hereinabove will be paid within a period of two months from the date of receipt of a copy of this order. With these directions the petition is disposed of. Rule is made absolute to the above extent. No order as to costs. Direct service permitted.

[Akil Kureshi, J.]

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